U.C.C. Section 1-207 and the Doctrine of Accord and Satisfaction: Ohio's About-Face in *AFC Interiors v. DiCello*

I. INTRODUCTION

Uniform Commercial Code (UCC) Section 1-207 has generated a great deal of controversy in the last twenty years by commentators and courts alike.[1] The focus of the controversy hinges on a single question: Does UCC Section 1-207 supersede the common law doctrine of accord and satisfaction as applied to the "full payment check?"[2] The answer varies, but it appears that the majority of authorities who have addressed the issue allow the common law to survive the UCC.[3]

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[1] For a discussion of UCC § 1-207 and the full payment check, see *generally*, WHITE & SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE, §§ 13-24, 689-92 (1988); CALAMARI & PERILLO, CONTRACTS, §§ 5-16, 4-11 (1987); Rosenthal, *Discord and Dissatisfaction: Section 1-207 of the Uniform Commercial Code*, 78 COLUM. L. REV. 48 (1978); Grosse & Groggin, *Accord and Satisfaction and the 1-207 Dilemma*, 89 COMM. L.J. 537 (1984) [hereinafter referred to as *Dilemma*]; Grosse & Groggin, *The 1-207 Dilemma Revisited*, 16 N. KY. L. REV. 425 (Sept. 1989) [hereinafter referred to as *Dilemma Revisited*]; Walter, *The Rise and Fall of U.C.C. Section 1-207 and the Full Payment Check—Checkmate?*, 21 LOY. L.A.L. REV. 81 (1987); Shanker, *The Folly of Full Settlement Checks—and a Declaration of their Independence*, 90 COMM. L.J. 7 (1985); Carabello, *The Tender Trap: U.C.C. Section 1-207 and Its Applicability to an Attempted Accord and Satisfaction by Tendering a Check in a Dispute Arising from a Sale of Goods*, 11 SETON HALL L. REV. 445 (1981); Fry, *You Can't Have Your Cake and Eat It Too: Accord and Satisfaction Survives the Uniform Commercial Code*, 61 N.D. L. REV. 353 (1985); Del Duca, *Handling "Full Payment" Checks*, 13 U.C.C. L.J. 195 (1981); Note, *Contracts— Section 1-207 of the Uniform Commercial Code Not Intended to Apply to Doctrine of Accord and Satisfaction*, 15 LAND & WATER L. REV. 737 (1980). *See also*, Danac, Inc. v. Gudenau & Co., 751 P.2d 947 (Alaska 1988); Horn Waterproofing Corp. v. Bushwick Iron & Steel Co., 488 N.E.2d 56 (N.Y. 1985); Scholl v. Tallman, 247 N.W.2d 490 (S.D. 1976).

[2] The "full payment" check is also known as the "conditional" check or the "full satisfaction" check. Each refers to the situation where the debtor sends a check to the creditor for less than the amount allegedly due. By using a check marked with payment in full language, the debtor intends to extinguish the entire debt upon the creditor's acceptance through negotiation of the check.

[3] *See* Rosenthal, *supra* note 1; *Dilemma*, *supra* note 1; *Dilemma Revisited*, *supra* note 1; Fry, *supra* note 1.

Ohio, however, recently joined the minority in a 1989 decision—*AFC Interiors v. DiCello*.[4] In this case, the plaintiff, AFC Interiors (AFC), and the defendant, DiCello, orally agreed that AFC would perform interior decorating services for DiCello at his condominium. When DiCello did not pay AFC's billing, AFC sued. DiCello responded by sending a letter to AFC stating that he was returning items not wanted and enclosing "a check in the full amount on the items [he] decided to keep."[5] AFC received both the returned items and the check, crossed out DiCello's "payment in full" notation, inserted "payment on account," and cashed the check. DiCello then filed for summary judgment, arguing that AFC's cashing of the full payment check amounted to an accord and satisfaction of the debt.

Both the trial and appellate courts agreed with DiCello. The Ohio Supreme Court, however, disagreed, stating that "[i]n light of the language of R[evised] C[ode] 1301.13 [UCC 1-207], we do not believe that the special endorsement by AFC reserving its rights and subsequent negotiation of the check should continue to be recognized as an accord and satisfaction."[6] This Comment will review this decision and its viability in the face of the conflicting majority opinions. Part II will describe the common law doctrine of accord and satisfaction and full payment checks; Part III will explore the legislative history of Uniform Commercial Code Section 1-207 and the conflict between this section and the common law; Part IV will discuss leading cases by courts that have addressed the conflict; and finally, Part V will evaluate *AFC Interiors* in light of the history and cases.[7]

II. THE COMMON LAW DOCTRINE OF ACCORD AND SATISFACTION

An "accord" is a new agreement substituted for an old agreement; "satisfaction" is the execution or performance of that new agreement.[8] Four elements constitute an accord and satisfaction: proper subject matter, competent parties, mutual assent, and consideration.[9] At English common law, before the

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[4] 46 Ohio St. 3d 1, 544 N.E.2d 869 (1989).

[5] *Id.* at 7, 544 N.E.2d at 874 n.1.

[6] *Id.* at 3, 544 N.E.2d at 871.

[7] Throughout this Comment, the Uniform Commercial Code will be referred to as "UCC" or "Code," and the OHIO REVISED CODE § 1301.13, embodying UCC § 1-207, will be referred to as "section 1-207" for simplicity. Unless otherwise stated, cites to the UCC shall refer to the 1978 official version.

[8] RESTATEMENT (SECOND) OF CONTRACTS, § 281 (1981); Hearst Corp. v. Lauerer, Markin & Gibbs, Inc., 37 Ohio App. 3d 87, 89, 524 N.E.2d 193, 195 (1987) (*quoting* Aeronsonic Instrument Corp. v. NuTone, Inc., 80 Ohio Law Abs. 289, 152 N.E.2d 739 (Ohio C.P. 1958)). *See also* 15 OHIO JUR. 3d 538 (1979); BLACK'S LAW DICTIONARY 16 (6th ed. 1991).

[9] Shady Acres Nursing Home v. Rhoades, 7 Ohio St. 3d 7, 9, 455 N.E.2d 489, 490 (1983).

doctrine of accord and satisfaction emerged, "a promise to pay, or payment, of a *lesser* amount was held insufficient consideration to discharge a debt for more, unless . . . something else (a 'horse, hawk, or robe') was thrown into the bargain."[10] American law agreed but applied this limitation only if the debt was liquidated, undisputed, and due.[11] If any of these factors were missing, "the new promise of performance [was] binding and the performance effected a discharge."[12] Thus, in order to meet the consideration requirement of accord and satisfaction, a bona fide dispute must exist between the parties at the time the accord offer is made; that dispute must concern the amount due and/or the nature of performance *still due* under the original contract; and the accord must intend to compromise the performance (or claimed performance) which is unliquidated (or in dispute).[13] The consideration for this accord is found in the mutual assent of the parties to accept something less than each contends is his or her right. For example, a party may waive the right to sue on the unpaid, disputed balance. "As long as there is a bona fide dispute, it is not even necessary to establish that there is reasonable doubt which party would succeed at a trial."[14]

In the full payment check situation, a debtor submits a check to the creditor for less than the full amount in dispute and marks the check with phrases such as "payment in full" or "full payment of the debt owed." This check then becomes the "offer" for the accord. Previously under Ohio law, the creditor had two options upon receipt of the full payment check: 1) return the check to the debtor as insufficient, or 2) retain the check in accord and satisfaction of the debt.[15] In fact, the accord and satisfaction could not "be consummated unless the creditor accept[ed] the lesser amount with the intention that it constitute[d] a settlement of the claim."[16] As a result, the creditor could not accept the check as partial payment by crossing out the debtor's notation and substituting reservation of rights language, unless the debtor expressly or impliedly withdrew her stipulation.[17]

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[10] Rosenthal, *supra* note 1, at 52 (*citing* Foakes v. Beer, 9 App. Cas. 605 (H.L. 1884) (emphasis added)). *See also* Carabello, *supra* note 1, at 446–47.

[11] Rosenthal, *supra* note 1, at 52 n.21; Walter, *supra* note 1, at 85; Carabello, *supra* note 1, at 447–49.

[12] Rosenthal, *supra* note 1, at 53.

[13] *Dilemma Revisited*, *supra* note 1, at 426.

[14] Fry, *supra* note 1, at 356.

[15] Shady Acres Nursing Home v. Rhoades, 7 Ohio St. 3d 7, 9, 455 N.E.2d 489, 490 (Ohio 1983).

[16] *Id.*

[17] Inger Interiors v. Peralta, 30 Ohio App. 3d 94, 95, 96, 506 N.E.2d 1199, 1199–1200, 1201 (1986). *See also* Air Van Lines, Inc. v. Buster, 673 P.2d 774, 779 (Alaska 1983); Kilander v. Blickle Co., 280 Or. 425, 429, 571 P.2d 503, 505 (1977) (court suggested that payee has option of collecting the tendered final payment "under protest" *unless* the debtor expressly demands waiver of that option).

The common law doctrine did not allow the creditor to take advantage of the offer's benefits without also accepting its burdens.[18] Typically, one of three justifications was used to bind the creditor under the accord: 1) the creditor was using the debtor's property (the check) in violation of the conditions under which it was offered; 2) the creditors action of depositing the check spoke louder than the words of reservation she wrote on the check, and such action inferred assent to the debtor's offer; or 3) under general contract law, the offeror was the master of his or her offer.[19] "Deciding whether to take what is now available or to wait and see whether one can get more in the long run is the [classic] choice a litigant makes every time a settlement is offered" and is not peculiar to the full payment check situation.[20]

Thus in *AFC Interiors*, AFC was put on notice by both the language on the check and the letter DiCello sent with the check, that DiCello intended his payment to be an offer in full settlement of his account. At that point, AFC had the choice of accepting the offer as presented or rejecting it in its entirety. By depositing the check, AFC made its decision, and the reservation of rights language should have been treated as a failed attempt to modify the offer.[21]

III. THE UNIFORM COMMERCIAL CODE SECTION 1-207

A. *The History of UCC 1-207*

Originally, Professor Karl Llewellyn, the chief drafter of the UCC, included section 1-207 in the Uniform Revised Sales Act in a series of sections aimed "'at smoothing the course of performance.'"[22] In early drafts of the Code, section 1-207 was placed within Article 3 and co-existed with a later-deleted section 3-802(3) that allowed the full payment check to operate as an accord and satisfaction unless the debtor took unconscionable advantage of the situation. Section 3-802(3) provided:

> Where a check or similar payment instrument provides that it is in full satisfaction of an obligation, the payee discharges the underlying obligation by

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[18] A. CORBIN, CONTRACTS, §§ 1277, 1279 (1952).

[19] Rosenthal, *supra* note 1, at 54–55; Walter, *supra* note 1, at 82–83; Carabello, *supra* note 1, at 450. *See also* Hearst Corp. v. Lauerer, Markin & Gibbs, Inc., 37 Ohio App. 3d 87, 90, 524 N.E.2d 193, 196 (1987) (*quoting* Kiser v. Wilberforce Univ., 33 Ohio Abs. 438, 35 N.E.2d 771 (Ohio C.P. 1941)).

[20] Fry, *supra* note 1, at 357–58.

[21] *See, e.g.*, E. FARNSWORTH, CONTRACTS § 3.13, 138 (1982).

[22] McDonnell, *Purposive Interpretation of the UCC: Some Implications for Jurisprudence*, 126 U. PA. L. REV. 795, 827 (1978).

> obtaining payment of the instrument unless he establishes that the original obligor has taken unconscionable advantage in the circumstances.[23]

At the time, this section attempted to embrace and expand the common law doctrine of accord and satisfaction as the doctrine applied to full payment checks by allowing these checks to operate as settlements *even* when the claim was *liquidated* or undisputed.[24]

In 1950, section 1-207 was pulled from Article 3 and placed in the Introductory Article.[25] For six years, from 1950 to 1956, both sections 1-207 and 3-802(3) co-existed peacefully within the UCC. No cross references were listed between the Comments of the two sections, and no changes were made to either section when section 1-207 was moved to the Introductory Article.[26]

Although section 1-207 and section 3-802(3) could be read together,[27] this result was probably not intended by the drafters, especially in light of the criticism the New York State Law Revision Commission gave section 1-207 in its report. The Commission's criticism suggested that section 1-207 would be unjust in situations *other* than those specifically covered by section 2-607(2) (regarding buyer notification of a seller's breach for nonconformity) because section 1-207 suggested to the New York Commission an undesired policy of allowing one party to unilaterally reserve all rights rather than promote a policy where one party promptly decides her position in the matter.[28]

When, in 1956, section 3-802(3) was deleted from the Code because critics believed the section worked a hardship and was open to abuse by the debtor, no special Comment notes were added to section 1-207.[29] The absence of amendments to the section or comments appears to imply that each section applied to different subject matter; if section 3-802(3) addressed full payment checks, then section 1-207 must have been intended to apply to some alternative subject matter.[30]

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[23] UCC § 3-802(3) (1952).

[24] Fry, *supra* note 1, at 361. *See* text accompanying note 13.

[25] UCC §§ 1-207, 3-802 (1950); McDonnell, *supra* note 22, at 827.

[26] Rosenthal, *supra* note 1, at 60.

[27] The effect of reading §§ 1-207 and 3-802(3) together would be to provide for the discharge of the obligation and subject it to a grant of power to the creditor that allows this result to be overridden by reservation of rights language. *Id.* at 61.

[28] *Id.* at 60 n.49.

[29] *Id.* at 60.

[30] *Id.* at 63. *See also* Flambeau Products v. Honeywell Info. Systems, 116 Wis. 2d 95, 107, 341 N.W.2d 655, 662 (Wis. 1984).

B. *The Conflict Surrounding UCC Section 1-207*

The conflict surrounding UCC Section 1-207 focuses on the interpretation given the words in both the statute and the accompanying Official Comments. The statute provides that

> [a] party who with explicit reservation of rights performs or promises performance, or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as 'without prejudice,' 'under protest,' or the like are sufficient.[31]

The first Comment that follows this section states that

> [t]his section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment 'without prejudice,' 'under protest,' 'under reserve,' 'with reservation of all our rights,' and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefore contemplates that limited as well as general reservations and acceptance by a party may be made 'subject to satisfaction of our purchaser,' 'subject to acceptance by our customers,' or the like.[32]

1. *Interpretations Which Find that the Common Law Survives Section 1-207*

Courts that rely on the statutory language of section 1-207 usually do so in one of three ways. In the first method, the court decides the applicability of section 1-207 by focusing on the words "assent to performance in a manner demanded or offered." If a creditor scratches out the debtor's "full payment" language, the creditor has not "assented to the performance in a manner . . . offered" by the debtor.[33] For example, D, debtor, owes money to C, creditor. C has billed D for $1,000, but D believes the correct amount owed is $900 and writes a check for the lower amount. On the back of that check, D writes "Payment in full for the Account of D." At this point, D has made a good faith offer to C to perform, or settle, the account for $900. When C receives the check, C may accept or reject the offer. If C accepts the offer, C deposits the

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[31] UCC § 1-207. Ohio's version of § 1-207 is identical to the UCC version and is found under Ohio Revised Code § 1301.13.

[32] UCC § 1-207 Official Comments. Ohio's version of the Official Comments is identical to the UCC version as found under Ohio Revised Code § 1301.13.

[33] Brown v. Coastal Truckways, Inc., 44 N.C. App. 454, 457, 261 S.E.2d 266, 268 (1980). *E.g.*, Barber v. White, 46 N.C. App. 110, 113, 264 S.E.2d 385, 386 (1980); Jahn v. Burns, 593 P.2d 828, 830 (Wyo. 1979).

check and effectuates an accord and satisfaction. If C rejects the offer, C must return the check to D. Should C scratch out the "full payment" language, add "reservation of rights" language, and deposit the check anyway, C has not agreed to the performance as offered by D. As a result, section 1-207 would not apply to the situation, and C would have effectuated an accord and satisfaction of D's debt for the amount of $900.

A second method used by courts is determining whether the reservation of rights language used by the creditor is "explicit" as required by section 1-207. If the language used is not clear enough to reserve creditors rights under section 1-207, the court will find an accord and satisfaction.[34] For example, use of the words "without recourse" have been held not good enough to indicate the explicit reservation of rights that section 1-207 requires.[35]

Courts using the third method focus on the Code's use of the word "performance," as opposed to "payment," in the statutory language. This argument stresses the phrase "performance along the lines contemplated by the contract" and suggests that if the drafters had intended section 1-207 to apply to payments (as in the full payment check), the word "payment" would have been included in the language.[36]

Courts and commentators that rely on the Comments to provide guidance suggest that this provision "was designed to permit continued performance of an ongoing contract, despite a pending dispute" when "one party's acquiescence in the other's performance . . . might, *by operation of law*, result in a waiver . . . [of] rights."[37] This section, then, provides protection for the acquiescing party who accepts the performance or payment and uses such words as "without prejudice" or "under protest."[38] If, however, the debtor *expressly* states her belief that the disputed amount is as offered in a full payment check, then the acquiescing party cannot use such reservation of rights language to protect her rights.[39] Such express language by the debtor provides notice to the acquiescing party that to accept this check indicates agreement with its terms and effectuates an accord and satisfaction. Such accord and satisfaction could not then be avoided by using reservation of rights language.

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[34] *E.g.*, Scholl v. Tallman, 247 N.W.2d 490, 493 (S.D. 1976); Bivins v. White Dairy, 378 So. 2d 1122, 1123 (Ala. Civ. App. 1979), *writ denied* 378 So. 2d 1125 (Ala. 1980).

[35] *Bivins*, 378 So. 2d at 1123–24.

[36] Rosenthal, *supra* note 1, at 63 (*citing* Hawkland, *The Effect of U.C.C. Section 1-207 on the Doctrine of Accord and Satisfaction by Conditional Check*, 74 COMM. L.J. 329, 331 (1969)); Walter, *supra* note 1, at 100. *See also Brown*, 44 N.C. App. at 457–58, 261 S.E.2d at 268; John Grier Constr. Co. v. Jones Welding & Repair, 238 Va. 270, 274, 383 S.E.2d 719, 721 (1989).

[37] Rosenthal, *supra* note 1, at 63.

[38] *Id.* at 63–64.

[39] *Id.* at 64; Carabello, *supra* note 1, at 454–55.

The Comments to section 1-207 make no mention of any intent by the drafters to displace the doctrine of accord and satisfaction.[40] This omission seems to indicate that the common law survived the enactment of the Code because "section 1-103 specifically states that the common law applies under the entire code unless explicitly displaced by it."[41]

2. *Interpretations Which Find that the UCC Supersedes the Common Law*

The leading opponents to the majority interpretation are Professors White and Summers who suggest "that [section] 1-207 gives a different meaning to what would otherwise be the contract of performance under common law."[42] They argue that the language of the provision allows creditors to keep full payment checks (through the use of reservation of rights language) without losing their rights to sue for the balance claimed due. "In fact," they state, "the language of 1-207 fits the partial payment perfectly."[43] They also admit, however, that the Comments do not fit the partial payment as well. The sole support for their conclusion comes from the New York legislature's debates over enactment of the Code in 1961. In adopting section 1-207, the New York Commission on Uniform State Laws reported that "[t]his section permits a party involved in a Code-covered transaction to accept whatever he can get by way of payment . . . without losing his rights to . . . sue for the balance of the payment, so long as he explicitly reserves his rights."[44]

While this legislative history is important for section 1-207, it is controlling only for the State of New York and not for every other state that enacts the provision.[45] In the four other states that have adopted White and Summers' position, the state legislature specifically made reference to the full payment check in their local commentary.[46]

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[40] Fry, *supra* note 1, at 359–60; Note, *supra* note 1, at 746–47.

[41] Note, *supra* note 1, at 747.

[42] WHITE & SUMMERS, *supra* note 1, at 690.

[43] *Id.* at 690–91.

[44] REPORT OF THE COMM'N ON UNIFORM STATE LAWS TO LEGISLATURE OF STATE OF N.Y., 19–20 (1961) (prepared by Professors William E. Hogan and Norman Penney of Cornell Law School).

[45] Rosenthal, *supra* note 1, at 62. *See also* Horn Waterproofing Corp. v. Bushwick Iron & Steel Co., 66 N.Y.2d 321, 329–30, 488 N.E.2d 56, 60–61, 497 N.Y.S.2d 310, 315 (1985) (cited as the leading commercial case on the minority interpretation by HAWKLAND, UNIFORM COMMERCIAL CODE SERIES, § 1-207:02 n.8 (Cum. Supp. 1990)).

[46] WHITE & SUMMERS, *supra* note 1, at 691. These states are Delaware, Florida, Massachusetts, and New Hampshire. *Id.*, n.4.

IV. CASES ADDRESSING THE UCC SECTION 1-207 CONFLICT

A. *States Holding that Section 1-207 Supersedes the Common Law Doctrine of Accord and Satisfaction*

New York's decision in *Horn Waterproofing Corp. v. Bushwick Iron & Steel Co.*[47] is the leading case which finds that UCC section 1-207 supersedes the accord and satisfaction doctrine.[48] In this case, the plaintiff agreed to repair the defendant's leaking roof, but after two days work, the plaintiff determined that the entire roof needed replacing and sent the defendant a bill for the work done. When the defendant challenged the amount billed, the plaintiff reduced the sum due from $1,241 to $1,080. The defendant, however, remained unhappy and sent a full payment check in the amount of only $500. Upon receipt of the check, the plaintiff added "Under Protest" to the defendant's notation, deposited the check, and sued for the balance of $580.[49]

The trial court found for the plaintiff stating that section 1-207 allowed a creditor to reserve his right to recover the balance due. The appellate division reversed, concluding that the common law applied and an accord and satisfaction had occurred when the plaintiff deposited the check.[50]

The New York Court of Appeals reversed the appellate division stating that

> [i]n our view, applying section 1-207 to a 'full payment' check situation, to permit a creditor to reserve his rights and, thereby, preclude an accord and satisfaction, more nearly comports with the content and context of the statutory provision and with the legislative history and underlying purposes of the Code as well, and is a fairer policy in debtor-creditor transactions.[51]

The court relied primarily on New York legislative history and the commentary by White and Summers in justifying its decision.[52] In addition, the court considered "the nonlimiting language of section 1-207 and its placement in the Code with other generally applicable provisions of [A]rticle 1 . . . persuasive that the section [was], indeed, applicable to all commercial transactions fairly considered to be 'Code-covered,'" and that this conclusion was true "[w]hether the underlying contract between the parties be for the purchase of goods,

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[47] 66 N.Y.2d 321, 488 N.E.2d 56, 497 N.Y.S.2d 210 (N.Y. 1985).

[48] Hawkland, Uniform Commercial Code Series, § 1-207:02 n.8 (Cum. Supp. 1990). WHITE & SUMMERS, *supra* note 1, at 692; *Dilemma Revisited*, *supra* note 1, at 439.

[49] *Horn Waterproofing*, 66 N.Y.2d at 322, 488 N.E.2d at 56–57, 497 N.Y.S.2d at 311.

[50] *Id.*

[51] *Id.* at 324, 488 N.E.2d at 58, 497 N.Y.S.2d at 312.

[52] *Id.* at 326, 327–29, 488 N.E.2d at 59–60, 497 N.Y.S.2d at 313–15. *See supra* notes 42–44 and accompanying text.

chattel paper, or personal services . . . ."[53] "[T]he use of a negotiable instrument [(the check in this case)] for the purpose of payment of attempted satisfaction of a contract debt is explicitly and specifically regulated by the provisions of [A]rticle 3 and, therefore, undeniably a Code-covered transaction."[54] This result was a change for New York since two previous lower court decisions had stated that the doctrine of accord and satisfaction still applied to transactions not within the Code—those relating to services rather than the sale of goods.[55]

The South Dakota Supreme Court has also held that section 1-207 supersedes the doctrine of accord and satisfaction; this court was the first state high court to do so.[56] In *Scholl v. Tallman*,[57] the defendants sent the plaintiff a full payment check for less than the amount billed. The plaintiff scratched out the defendant's "settlement in full" language and wrote "'Restriction of payment in full refused. $1,826.65 remains due and payable,'" deposited the check and sued for the balance allegedly owed.[58]

The trial court agreed with the defendants and found an accord and satisfaction had occurred. The state supreme court reversed, however, based on a peculiarity in their common law. South Dakota codified its common law prior to the adoption of the UCC in that state. Under South Dakota Codified Laws (SDCL) Section 20-7-4, an accord and satisfaction occurs if the creditor accepts such *in writing*.[59] In *Scholl*, no accord and satisfaction could occur when the creditor cashed the debtor's full payment check because the creditor's conditional endorsement was an "explicit reservation of rights under SDCL 57-1-23 [UCC section 1-207] and [was] not acceptance in writing under SDCL 20-7-4."[60] Although the South Dakota court cited to White and Summers and a New York case for support in its interpretation of section 1-207, its primary focus was to reconcile its common law statute with the UCC provision enacted in the state.[61]

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[53] *Horn Waterproofing*, 66 N.Y.2d at 329–30, 488 N.E.2d at 61, 497 N.Y.S.2d at 315.

[54] *Id.*

[55] *Dilemma Revisited*, *supra* note 1, at 442 & n.90.

[56] Fry, *supra* note 1, at 366; Walter, *supra* note 1, at 94.

[57] 247 N.W.2d 490 (S.D. 1976).

[58] *Id.* at 491.

[59] *Id.* Section 20-7-4 provides that "[p]art performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation." S.D. CODIFIED LAWS ANN. § 20-7-4 (1991).

[60] *Scholl*, 247 N.W.2d at 492.

[61] *Id.* at 491. Rosenthal, *supra* note 1, at 67.

Of the thirteen state high courts that have addressed this conflict between the common law doctrine of accord and satisfaction and UCC section 1-207,[62] only two—New York and South Dakota—have found that the UCC supersedes the common law. An additional four state legislatures—Delaware, Florida, Massachusetts, and New Hampshire—have adopted this position in their local Comments.[63] However, one state legislature—Illinois—has adopted special Comments that come the "closest to what the majority of jurisdictions have concluded is the intent of the [1-207] section:" that the accord and satisfaction doctrine survives enactment of section 1-207.[64]

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[62] Air Van Lines, Inc. v. Buster, 673 P.2d 774 (Alaska 1983) (*followed by* Danac, Inc. v. Gudenau & Co., 751 P.2d 947 (Alaska 1988)); Anderson v. Rosebrook, 737 P.2d 417 (Colo. 1987); County Fire Door Corp. v. C.F. Wooding Co., 202 Conn. 277, 520 A.2d 1028 (1987); Stultz Elec. Works v. Marine Hydraulic Eng. Co., 484 A.2d 1008 (Me. 1984); Cass Constr. Co. v. Brennan, 222 Neb. 69, 382 N.W.2d 313 (1986); Horn Waterproofing Corp. v. Bushwick Iron & Steel Co., 66 N.Y.2d 321, 488 N.E.2d 56, (1985); Scholl v. Tallman, 247 N.W.2d 490 (S.D. 1976); Gallagher Lumber Co. v. Shapiro, 137 Vt. 139, 400 A.2d 984 (1979); Marton Remodeling v. Jensen, 706 P.2d 607 (Utah 1985); John Grier Constr. Co. v. Jones Welding & Repair, Inc., 238 Va. 270, 383 S.E.2d 719 (1989); Flambeau Prod. Corp. v. Honeywell Info. Systems, Inc., 116 Wis. 2d 95, 341 N.W.2d 655 (1984); Jahn v. Burns, 593 P.2d 828 (Wyo. 1979). *Cf.*, Charleston Urban Renewal Auth. v. Stanley, 346 S.E.2d 740 (W.V. 1985) (court found that a service contract did not fall under the UCC, but should a contract involving the sale of goods come before the court, it would hold that the common law was not superseded by UCC § 1-207).

[63] WHITE & SUMMERS, *supra* note 1, at 691 and n.4. *See* DEL. CODE ANN. tit. 6, § 1-207 (Michie 1990) (Delaware Study Comment states that this section "makes possible avoidance of the sometimes harsh effect of cases holding that a debt is discharged in its entirety by acceptance of part payment which the debtor tenders as full payment of an unliquidated claim"); FLA. STAT. § 671.207 (1990) (Florida Code Comments state that "[t]his section offers a device of considerable practical value, in permitting a party to accept whatever he can get in payment, performance etc. without having to gamble with his legal rights to demand the balance of the payment or performance"); MASS. GEN. LAWS ANN. ch. 106, § 1-207 (West 1991) (Massachusetts Annotations state that "[t]his section permits a party involved in a code-covered transaction to 'accept' whatever he can get by way of payment, performance, etc., without losing his rights to . . . sue for the balance of the payment etc., so long as he explicitly reserves his rights"); N.H. REV. STAT. ANN. § 382-A:1-207 (Equity 1990) (New Hampshire Comments adopt the same language as the Massachusetts Annotations, but add that "[a]s to the common law, the section would . . . permit acceptance of a part performance or payment tendered in full settlement without the acceptor gambling with his legal right to demand the remainder . . ., a course impossible now save where the part tendered is either liquidated or undisputed").

[64] *Dilemma Revisited*, *supra* note 1, at 449. *See* ILL. ANN. STAT., ch. 26, para. 1-207 (Smith-Hurd Supp. 1991) (The Illinois Comments state that "[t]he outcome should depend on the facts of each case. Paragraph 1-207 should not have a blanket application merely because a reservation of rights appears on the reverse side of a check which the drawer has indicated, if accepted, is to accomplish an accord and satisfaction").

B. *States Holding that the Common Law Doctrine of Accord and Satisfaction Survives UCC Section 1-207*

The Wisconsin Supreme Court adopted the majority interpretation in *Flambeau Products Corp. v. Honeywell Info. Systems*.[65] In this case, the plaintiff, Flambeau, bought computer equipment from the defendant, Honeywell, in September, 1975. As part of the sales agreement, Flambeau was to receive $14,000 worth of programming services for a year ending on October 1, 1976. Flambeau did not use the programming services and sought to deduct that amount from its total bill due of $109,412 by sending a full payment check for the lesser amount along with a letter describing the deduction. Honeywell cashed the check, notified Flambeau that the check was not accepted as payment in full, and requested the balance due.[66]

Flambeau sued for summary judgment on the ground that an accord and satisfaction had occurred; the trial court granted the motion.[67] The appellate court disagreed with the trial court,[68] but was reversed on appeal by the state supreme court.[69]

In finding an accord and satisfaction had occurred, the supreme court reviewed the legislative history of the Uniform Commercial Code and found it conflicting and unhelpful.[70] As a result, the Wisconsin high court focused on the rule of construction set forth in UCC section 1-102:

> (a) To simplify, clarify, and modernize the law governing commercial transactions;
> (b) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;
> (c) To make uniform the law among the various jurisdictions.[71]

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[65] 116 Wis. 2d 95, 341 N.W.2d 655 (1984).

[66] *Id.* at 99, 341 N.W.2d at 657–58.

[67] *Id.*

[68] Flambeau Prod. Corp. v. Honeywell Info. Systems, 111 Wis. 2d 317, 330 N.W.2d 228 (Wis. Ct. App. 1983).

[69] Flambeau Prod. Corp. v. Honeywell Info. Systems, 116 Wis. 2d 95, 341 N.W.2d 655 (Wis. 1984).

[70] The court discussed the deleted § 3-802(3) and its reading in conjunction with § 1-207 which suggested § 1-207 should be read as not applicable to full payment checks. *Flambeau*, 116 Wis. 2d at 106, 341 N.W.2d at 661; *see also* notes 21–29 and accompanying text. The court also recognized the 1961 New York Commission report as being "of some significance since New York took a lead in studying the UCC and suggesting revisions during the drafting of the Code . . .," but that it "has no binding effect . . . on [this court's] interpretation of the UCC as passed by the Wisconsin legislature." *Flambeau*, 116 Wis. 2d at 106, 341 N.W.2d at 662.

[71] UCC § 1-102.

In so doing, the court decided that applying section 1-207 to the full payment check would neither "'simplify,' 'clarify,' or 'modernize' the law governing commercial transactions . . .", nor promote the policy of "'continued expansion of commercial practice.'"[72] In fact, "all that would be accomplished would be the elimination of the simple technique of the full payment check . . . ."[73]

The court concluded by stating that the long-standing doctrine of accord and satisfaction rested not only on principles of contract law but on principles of sound public policy, and quoted Corbin from his *Contracts* treatise:

> It is unfair to the party who writes the check thinking that he will be spending his money only if the whole dispute will be over, to allow the other party, knowing of that reasonable expectation, to weasel around the deal by putting his own markings on the other person's checks.[74]

In *County Fire Door Corp. v. C.F. Wooding Co.*,[75] Connecticut joined the majority of jurisdictions finding that the common law survives section 1-207. Here, the defendant ordered doors and frames from the plaintiff who delivered the goods late. Upon receiving plaintiff's bill, the defendant back-charged the plaintiff for damages caused by the late delivery and sent a check for the revised amount. The defendant marked the check "Final Payment . . . [and] [b]y its endorsement, the payee accepts this check in full satisfaction of all claims against the [defendant] . . . ."[76] The plaintiff crossed out this language, added that "[t]his check is accepted under protest and with full reservation of rights to collect the unpaid balance . . .,"[77] and deposited the check. When the defendant failed to make further payments, the plaintiff sued.[78]

The trial court found for the plaintiff "because the amount of the tender had been no more than the amount the defendant itself had calculated to be due and owing to the plaintiff."[79] On appeal, the defendant claimed the plaintiff was bound by the terms of the check when the plaintiff knowingly cashed a full payment check.[80] The Connecticut Supreme Court agreed.[81]

In analyzing section 1-207, the court reconciled its provisions with those found elsewhere in the Code, namely Article 3 (negotiable instruments) and

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[72] *Flambeau*, 116 Wis. 2d at 110, 341 N.W.2d at 663.
[73] *Id.*
[74] 6 CORBIN, CONTRACTS § 1279, 130 (1962).
[75] 202 Conn. 277, 520 A.2d 1028 (1987).
[76] *Id.* at 279, 520 A.2d at 1029.
[77] *Id.* at 280, 520 A.2d at 1030.
[78] *Id.*
[79] *Id.* at 285, 520 A.2d at 1030.
[80] *Id.*at 280–81, 520 A.2d at 1030.
[81] *Id.* at 291–92, 520 A.2d at 1036.

Article 2 (sale of goods). Under Article 3, the court determined that the impact of its various provisions were clear.[82]

> Because the check tendered by the defendant was only enforceable "according to its original tenor," the plaintiff, by receiving "payment or satisfaction" discharged the defendant not only on the instrument, but also on the underlying obligation . . . . To read section [1-207] to validate plaintiff's conduct . . . would, therefore, fly in the face of the relevant provisions of [A]rticle 3, which signal the continued vitality of the common law principles of accord and satisfaction.[83]

In analyzing Article 2, the court found the article had a "close and harmonious connection" with section 1-207 because Article 2 "recurrently [drew] inferences from acquiescence in, or objection to, the performances tendered by one of the contracting parties."[84] The court believed it significant that the text of section 1-207 repeatedly referred to "performance" because such performance was a central aspect of Article 2 sales contracts, in contrast to Article 3 in which instruments were not generally described as being "performed" by anyone.[85]

The Connecticut high court then concluded that "when performance of a sales contract has come to an end, section [1-207] was not intended to empower a seller, as payee of a negotiable instrument, to alter that instrument by adding

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[82] The Connecticut Supreme Court stated that § 3-407 "takes a dim view of the unauthorized alteration of an instrument" whose effect is to either "discharge the liability, on the instrument, of 'any party whose contract is thereby changed,' or to continue the enforceability of the instrument 'according to its original tenor.'" *Id.* at 1032. By substituting words of protest for words of satisfaction, the plaintiff risked discharging the defendant completely, if the conduct was deemed fraudulent. *Id.* Even if not fraudulent, the result is supported by § 3-802(1)(b) which "provides that, presumptively, the taking of a negotiable instrument suspends the underlying obligation 'until the instrument is due,' and that 'discharge of the underlying obligor on the instrument also discharges him on the obligation.'" *Id.* In addition, under § 3-603(1), "a drawer is discharged from liability on an instrument 'to the extent of his payment or satisfaction.'" *Id.* at 286, 520 A.2d at 1033.

[83] *Id.*

[84] *Id.* Cited examples include § 2-208 (stating "any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement"); § 2-207 (stating that "[b]etween merchants such terms become part of the contract language unless . . . notification of objection to them . . . is given within a reasonable time . . ."); § 2-602 ("[r]ejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller"); § 2-605 ("[t]he buyer's failure to state . . . a particular defect . . . precludes him from relying on the unstated defect to justify rejection or to establish a breach"); § 2-606 ("[a]cceptance of the goods occurs when the buyer . . . fails to make an effective rejection . . ."); and § 2-607 ("[a]cceptance of goods by the buyer precludes rejection"). *Id.* at 287, 520 A.2d at 1033-34.

[85] *Id.* at 290, 520 A.2d at 1035.

words of protest to a check tendered by a buyer on condition that it be accepted in full satisfaction of an unliquidated debt."[86]

V. EVALUATING OHIO'S DECISION IN AFC INTERIORS V. DICELLO

One method of resolving the conflict between the common law and UCC section 1-207 is to apply a "purposive interpretation" of the Code, as suggested by one commentator. Under "purposive interpretation," the legal standards of the UCC are interpreted in terms of the purposes the drafters sought to implement.[87] Professor McDonnell explains that the UCC drafters specifically established the goals of their work by incorporating the underlying purposes and policies of the Code in section 1-102(2).[88] The point and purpose of the Code was to "avoid the complexity, obsolescence, and divergent interpretations which had plagued prior uniform laws in the commercial field."[89] Thus, the drafters intended to promote *uniformity* among the states in the area of commercial law. To help assure such uniformity, the Comments were provided to give a "fuller delineation of purpose . . . to individual Code sections"[90] and "[a]lthough the comments are not the law . . ., they are utilized by courts more frequently than any other source when questions of interpretation arise."[91]

Professor McDonnell lists four steps to purposive interpretation: 1) Read all of the UCC statutes to determine their underlying purposes and the relationship between them; 2) Look for an articulation of purpose in the Official Comments; 3) Explore how the current statutory text varies from

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[86] *Id.*

[87] McDonnell, *supra* note 22, at 797–98.

[88] *Id.* at 798. UCC § 1-102(2) states as follows:

> (2) Underlying purposes and policies of this Act are
>
> (a) to simplify, clarify, and modernize the law governing commercial transactions;
>
> (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
>
> (c) to make uniform the law among the various jurisdictions.

UCC § 1-102(2).

[89] McDonnell, *supra* note 22, at 798.

[90] *Id.* at 800. The Official Comment 1 to UCC § 1-102 states that

> [t]he text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Act as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, *in conformity with the purposes and policies involved.*

UCC § 1-102 Official Comments (emphasis added).

[91] Note, *supra* note 1, at 747.

earlier drafts of the Code; and 4) Examine the results of steps one through three for a coherent interpretation.[92]

When courts decide to refrain from purposive interpretation and disregard the purposes underlying the UCC, they do so by using devices that effectuate their own policy, in opposition to those of the drafters.[93] These devices include 1) retreating to the "plain meaning rule;"[94] 2) retreating to a pre-Code legal standard;[95] and/or 3) retreating to authority to find that the Code means what the authorities say it means.[96]

In applying this analysis to Ohio's recent four-to-three decision in *AFC Interiors*, the Ohio high court skipped all four steps of purposive interpretation and decided, instead, to play a "follow-the-leader" game by finding that the Code means what other authorities say it means. The court only "generally identif[ied] . . . legislative comment, prior case holdings and limited scholarly comment in declaring that the section was intended to alter or displace the common law doctrine of accord and satisfaction."[97] The majority "misread and misapplied the Uniform Commercial Code, ignored the overwhelming weight of authority in other jurisdictions, and overruled the long-standing decisional law of this state . . . ."[98]

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[92] McDonnell, *supra* note 22, at 805–09.

[93] *Id.*

[94] The plain meaning rule bars parties from using extrinsic evidence to aid the interpretation of the language in question. Courts using this rule for statutory interpretation bar "the use of legislative history to interpret *statutory* language that is 'clear on its face.'" FARNSWORTH, *supra* note 21, § 7.12, at 501.

[95] *See* McDonnell, *supra* note 22, at 816–24. McDonnell cites the case of American Card Co. v. H.M.H. Co., 97 R.I. 59, 196 A.2d 150 (1963), as an example of this "retreating" device. In *American Card*, the court ignored the provided UCC § 9-105(1) definition of a security agreement (an agreement which creates or provides for a security interest), and instead used § 9-203(1)(a) to create its own definition. This latter section "declares nonpossessory security interests to be unenforceable unless 'the debtor has signed a security agreement which contains a description of the collateral.'" McDonnell, *supra* note 22, at 817. The *American Card* court held, in fashioning its own definition, that the parties in the case showed no "'evidence of an agreement by the debtor to grant claimants a security interest.'" *American Card Co.*, 97 R.I. at 61, 196 A.2d at 152. By resorting to this language, the court used pre-Code, common-law vernacular based on granting clauses in real estate conveyances and chattel mortgages. McDonnell, *supra* note 22, at 871.

[96] McDonnell, *supra* note 22, at 824–28. *See, e.g.*, Scholl v. Tallman, 247 N.W.2d 490 (S.D. 1976) (court did not define the policy behind section 1-207 through the language of the section, the comments, or the history, but only looked to other sources of law).

[97] *Dilemma*, *supra* note 1, at 559; *see* AFC Interiors v. DiCello, 46 Ohio St. 3d 1, 6, 544 N.E.2d 869, 873 (1989) (dissent).

[98] *AFC Interiors*, 46 Ohio St. 3d at 6, 544 N.E.2d at 873 (dissent) (with reference to Seeds, Grain, & Hay Co. v. Conger, 83 Ohio St. 169, 93 N.E. 892 (1910), *overruled* by AFC Interiors v. DiCello, 46 Ohio St. 3d 1, 544 N.E.2d 869 (1989), holding that when a creditor receives a full payment check, that creditor must either accept the amount tendered upon the terms of the condition, or reject the payment entirely).

The court began by quoting the Official Comments to Ohio Revised Code 1301.13 (UCC section 1-207) as follows:

> 1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, *or payment* 'without prejudice,' 'under protest,' 'under reserve,' 'with reservation of all our rights,' and the like.[99]

Specific attention was drawn to the phrase "or payment," but the court neglects to state why the "or payment" has significance on its own. Presumably, it was to imply that a "payment," and not just "performance," was contemplated by the drafters of section 1-207. Such analysis, however, would take the phrase out of context since the Comment begins by stating that "[t]his section provides machinery for the *continuation of performance* along the lines contemplated by the contract . . . ."[100] It is the *performance* that is emphasized in this statement, and *not* the payment as the court incorrectly implied.

The court next mentions in passing that scholars have disagreed on the correct outcome of this debate and that the court is of the opinion that

> the drafters of the UCC and Ohio's General Assembly, promulgated UCC 1-207 in response to a perceived injustice to creditors that occurs where a creditor, under protest, deposits a check marked 'paid in full' or the like, and later discovers that an accord and satisfaction has taken place which extinguished the right to demand further payment on the debt.[101]

This reasoning, however, appears flawed since a leading commentator on this section found no such intention on the part of the UCC drafters,[102] and Ohio's Revised Code lists no relevant legislative history at all regarding section 1-207.[103]

In reviewing relevant cases, the court finds a "discernible trend" has developed toward the current minority view that allows the UCC to supersede the common law regarding section 1-207. It cites a North Carolina appellate case, *Baillie Lumber Co. v. Kincaid Carolina Corp.*,[104] as part of this "trend," yet fails to note that a later-decided North Carolina case, *Brown v. Coastal*

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[99] *AFC Interiors*, 46 Ohio St. 3d at 3, 544 N.E.2d at 871.

[100] OHIO REV. CODE ANN. § 1301.13 Official Comment 1 (Baldwin 1988) (emphasis added).

[101] *AFC Interiors*, 46 Ohio St. 3d at 3, 544 N.E.2d at 871.

[102] *See* Rosenthal, *supra* note 1, at 58–63; *see also supra* notes 24–30 and accompanying text.

[103] *See* OHIO REV. CODE ANN. § 1301.13 (Baldwin 1988).

[104] 4 N.C. App. 342, 167 S.E.2d 85 (1969).

Truckways,[105] referred to *Baillie* and held that section 1-207 did *not* alter the common law.

The facts in *Baillie* included a billing for lumber sent by the plaintiff seller to the defendant buyer. No controversy existed over the price of the lumber or the amount billed. The defendant, however, could not pay the bill and offered the plaintiff thirty-five cents on the dollar, payable in two installments. The plaintiff did not accept the offer. The defendant sent the two installment checks anyway (marking the second one as "final"), on which the plaintiff wrote "with reservation of all our rights," deposited them, and then sued for the balance due.[106]

The court held that the debt was liquidated and undisputed so that no consideration existed for the discharge of the balance due, and thus no accord and satisfaction occurred.[107] The court then added that under section 1-207, the plaintiff did not accept the second check in full payment but rather in the manner provided under section 1-207.[108]

Eleven years later, the court in *Brown v. Coastal Truckways* held that when the plaintiff struck the defendant's "account in full" language, the plaintiff did not "assent to 'performance in a manner . . . offered by' the defendant"[109] which made 1-207 inapplicable to the case.[110] As a result, UCC section 1-207 did not change the common law. The *Brown* court then referred to the *Baillie* decision "which would support a different result. That case involved a fully liquidated claim. It is not precedent for this case."[111] In essence, the *Brown* decision made the *Baillie* language dictum for unliquidated debt cases, which is the situation in *AFC Interiors*.

The Ohio high court next refers to South Dakota's *Scholl* case and New York's *Horn Waterproofing* case,[112] both of which were decided using facts and circumstances not present in Ohio.[113] The *Scholl* case involved a peculiarity in the state's common law that worked an accord and satisfaction *only* if the creditor notified the debtor in writing of such acceptance, while in *Horn Waterproofing*, the New York high court relied on New York legislative history that specifically interpreted section 1-207 as changing the doctrine of

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[105] 44 N.C. App. 454, 261 S.E.2d 266 (1980).

[106] *Baillie*, 4 N.C. App. at 345, 167 S.E.2d at 87.

[107] *Id.* at 352, 167 S.E.2d at 92. *See also* notes 8–14 and accompanying text.

[108] *Baillie*, 4 N.C. App. at 353, 167 S.E.2d at 92–93.

[109] *Brown*, 44 N.C. App. at 457, 261 S.E.2d at 268.

[110] *See* note 33 and accompanying text.

[111] *Brown*, 44 N.C. App. at 458, 261 S.E.2d at 269.

[112] AFC Interiors v. DiCello, 46 Ohio St. 3d 1, 4–5, 544 N.E.2d 869, 871–72 (1989); Scholl v. Tallman, 247 N.W.2d 490 (S.D. 1976); Horn Waterproofing Corp. v. Bushwick Iron & Steel Co., 66 N.Y.2d 321, 488 N.E.2d 56, 497 N.Y.S.2d 310 (1985); *see also* notes 45–58 and accompanying text.

[113] *See supra* notes 47–60 and accompanying text.

accord and satisfaction. Neither case supported Ohio's recent decision in *AFC Interiors*.

In addition, the Ohio court failed to do any analysis concerning section 1-207 and how it relates to the other provisions of the UCC—an omission frequently found in cases by courts who avoid "purposive interpretation" analysis and simply "follow" other court decisions and commentators without making an independent analysis.[114]

VI. CONCLUSION

The purpose of the Uniform Commercial Code was to promote uniformity and unity among the various states in the area of commercial law. In order to do so, the drafters not only included this goal within section 1-102(2),[115] but specifically and deliberately included Comments to the Code which detail the policy underlying each particular code section. By deciding under section 1-207 that the common law doctrine of accord and satisfaction no longer applies to full payment checks, the Ohio Supreme Court has clearly, and wrongly, decided to ignore the purpose underlying the Code. And while this court "believes" the Ohio General Assembly promulgated UCC section 1-207 in response to a perceived injustice to creditors,[116] "a jurisdiction which either did not adopt the New York Study Commission's report or which conducted its own analysis of the Code could not have given any indication to its legislature that a change of the common-law rule was intended."[117]

Although "[t]he common law rule may seem draconian, . . . it is not without reason. The 'full payment' check has provided a method for both distraught debtors and aggrieved consumers to settle disputes without litigation" for decades.[118] By construing UCC section 1-207 as applicable to the full payment check, the Ohio high court severely hampered a common means of out-of-court settlement for commercial disputes and enhanced the potential for increased litigation. Full payment checks are not forced upon creditors, who, under the common law, have the option of accepting the conditioned check and its terms or rejecting the offer in its entirety. In fact, any perceived unfairness to the creditor may actually result "from a failure to recognize the identity of a full payment check as useful and valuable settlement mechanism. Any overreaching by the debtor was resolved by common law and can be resolved under the Code through the duty of good faith expressed in

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[114] *Dilemma Revisited*, *supra* note 1, at 443.

[115] *See* note 88 for the text of UCC § 1-102(2).

[116] *AFC Interiors*, 46 Ohio St. 3d at 4, 544 N.E.2d at 871. The Ohio Revised Code § 1301.13 lists no legislative history.

[117] *See* Walter, *supra* note 1, at 101 (footnote omitted).

[118] Charleston Urban Renewal Auth. v. Stanley, 346 S.E.2d 740, 743 (W. Va. 1985); *cf.*, *AFC Interiors*, 46 Ohio St. 3d at 7, 544 N.E.2d at 874 (dissent).

section 1-203."[119] Under the Ohio Supreme Court's ruling, however, the debtor now bears all the risks, for her only options are to sue or be sued.[120] Such a result was not intended by the drafters of section 1-207, and such a result should not have been intended by the Ohio Supreme Court.

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[119] Fry, *supra* note 1, at 382. UCC § 1-203 provides that "[e]very contract or duty within this Act imposes an obligation of good faith in its performance or enforcement." UCC § 1-203.

[120] Comment, *UCC Section 1-207 and the Full Payment Check: The Struggle Between the Code and the Common Law—Where do the Debtor and Creditor Fit In?*, 7 U. DAYTON L. REV. 421, 433-34 (1982).